quiring student who wishes to know how and why the doctrine of estates or of seisin came to exist in the form each took in nineteenth century English law, supplementary reading of some such text as Simpson's *An Introduction to the History of the Land Law*[2] must be added to Dr Helmore's treatise.

The Victorian practitioner must use Dr Helmore's work with considerable care, for the statutory provisions of Victoria and New South Wales often diverge, for example, the different provisions of section 16 (1) of the Conveyancing Act 1919 (N.S.W.) and section 192 of the Property Law Act 1958 (Vic.) and the existence in New South Wales of section 44 (2) of the Conveyancing Act 1919 which provides that every limitation which might be made by way of use under the Statute of Uses may now be made by direct conveyance without the intervention of uses. However the work will be of considerable use to a Victorian lawyer in tracing the modifications made to English law by the New South Wales Legislature between the time of its introduction to Australia and the establishment of the State of Victoria in 1850 when Victoria took its common and statute law in this modified form.[3]

The chapters dealing with future interests might be more conveniently placed immediately after those dealing with the freehold estates rather than separated by the chapters dealing with Leasehold Estates, Mortgages, Charges and Liens, Rent Charges, Easements, Profits, Covenants and Licences.

Small criticisms are no doubt easy to make in a work of such magnitude, but in the treatment, on page 252, note [9] and on pages 278-279, of section 22 of the Married Women's Property Act, 1901, dealing with summary jurisdiction in disputes between husband and wife as to title or to possession of property, reference might more appropriately be made to the strict law approach laid down by such cases as *Wirth v. Wirth*,[4] *Noack v. Noack*[5] and *Pearson v. Pearson*,[6] rather than the wide discretionary approach of the cases in fact mentioned, *Rimmer v. Rimmer*[7] and *Wood v. Wood*.[8]

Again in relation to the requirements of formal words of limitation for the creation of equitable estates, it may be noted that the decision of Roper J. in *Caroll v. Chew*,[9] referred to on page 296 of the text, to the effect that, even before the enactment of section 47 of the Conveyancing Act, 1919, formal words of limitation were not required for the creation of an equitable estate in fee simple in lands under the Real Property Act, was not followed by Dean J. in *Re Austin's Settlement*.[10]

Small criticisms aside, Dr Helmore's work appears to be a work of major importance to the real property lawyer of New South Wales and he is to be congratulated on his contribution to this field.

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The Law of Torts, by JOHN G. FLEMING, D.C.L. 2nd ed. (The Law Book Co. of Australasia Pty Ltd, Sydney, 1961), pp. i-xlv, 1-720. Price £4 15s.

Professor Fleming's The Law of Torts, was first published in 1957 and was reviewed in detail in earlier pages of this Review. That it has been found

[2] A. W. B. Simpson, *An Introduction to the History of the Land Law* (1961).
[3] 13 & 14 Vict. c. 59, s. 25. [4] (1956) 30 *Australian Law Journal* 586.
[5] [1959] V.R. 137. [6] [1961] V.R. 693. [7] [1953] 1 Q.B. 63.
[8] [1956] V.L.R. 478. [9] (1947) 47 S.R. (N.S.W.) 229. [10] [1960] V.R. 532.

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necessary to publish the present edition, the second edition, after a relatively brief lapse of four years is a tribute to the book's excellent qualities. Professor Fleming states in his Preface that he has undertaken a large measure of revision: that at least three chapters—those dealing with Causation, Voluntary Assumption of Risk and Employers' Liability—have been substantially rewritten: and that scattered throughout the text and footnotes innumerable lesser changes have also been made. In addition we are told that the new edition includes more than 550 additional citations, most of which represent the accumulation of new case law.

This being a review of the second edition, detailed comment is not proposed. But some observations may be made. In the chapter headed 'Suppliers of Chattels: Products Liability', the author states on page 470 that 'Although formally a branch of negligence, manufacturers' liability in effect quickly discarded the element of fault and assumed the characteristics of strict liability, through the operation of the procedural device of *res ipsa loquitur*'. But is this correct, in that even if *res ipsa loquitur* does so apply it is clearly still open to a manufacturer to absolve himself from liability by a showing of no negligence, though it is appreciated that in some cases this may be no easy task? There may, however, be a question whether strict liability would not be the desired result in some situations. It seems that there is an influx of new drugs on the market. The Commonwealth Therapeutic Substances Act 1953-1959 contains, *inter alia,* provisions controlling the importation of certain substances and Division 3 of Part XIV of the Victorian Health Act 1958 contains, *inter alia,* provisions controlling the marketing of proprietary medicines as therein defined. But, albeit in a very small percentage of users, some drugs have been found to possess a deleterious side effect capable of causing serious injury. In the case of some drugs this side effect is not revealed even by elaborate pre-market testing, and, after its discovery, the drug is withdrawn from the market. In the case of other drugs the judgment is made that their continued use will save so many lives that they should continue to be made available notwithstanding statistical knowledge that one person in so many thousands of users may suffer from side effects. The legal position of a person who is unfortunate enough to be one of the very few for whom the drug, far from being beneficial, causes harm, is not encouraging. There may be three innocent parties—the doctor, the patient and the drug house. Whether knowledge in the patient would constitute *volenti* cannot, perhaps be stated with certainty. But the doctor would not, it is considered, be liable in negligence if the treatment was in accordance with general medical practice: this may entail a 'matching' between the drug and the illness for which it was prescribed. And the drug house would also not appear to be liable if the pre-market tests were considered reasonable in all the circumstances, and, if they continued to market the drug after knowledge of the side effect, if such a judgment was also reasonable in all the circumstances and beneficial to society as a whole.[1] These conditions would, of course, generally be met, the injured party being without a remedy on the basis of *damnum sine injuria.* Rather than let the loss lie where it falls, it may be considered that justice would be better served by visiting strict liability upon the drug company which is equipped to spread the loss over the community by increasing the price of

[1] See *Daborn v. Bath Tramways Co.* [1946] 2 All E.R. 333; *Watt v. Hertfordshire County Council* [1954] 2 All E.R. 368. But see *Mercer v. Commissioner for Road Transport and Tramways (N.S.W.)* (1936) 56 C.L.R. 580. Generally, *Fleming* at pp. 125-127.

its commodities. Alternatively, the matter may, perhaps, properly be considered as one appropriate for Government compensation.

On pages 130-137 Professor Fleming deals with actions for breach of statutory duty. The discussion forms part of a chapter entitled 'Standard of Care', and is itself entitled 'Statutory Standards'. There is perhaps an objection to this method of treatment. It is that a student may possibly not realize that the tort of breach of statutory duty is quite dissimilar from the tort of negligence, and that, as stated by Lord Wright in *London Passenger Transport Board v. Upson*:[2]

> . . . whatever the resemblances, it is essential to keep in mind the fundamental differences of the two classes of claim.

Unfortunately, *The Wagon Mound*[3] was reported after this very good book went to press. And this is a pity as the case raises some interesting problems. For example, as *The Wagon Mound* posits the same test for remoteness as for duty, does it now follow that no remoteness question will ever arise once a duty has been established: is such a case as *Thurogood v. Van Den Berghs & Jurgens Ltd*[4] a thing of the past? On page 191 Professor Fleming, for long a staunch and convincing critic of the Direct Consequences Test, states that 'It is perfectly consistent with a morality based on fault to exact that a man must take his victim as he finds him'. This statement has received judicial support. In *Smith v. Leech Brain & Co. Ltd*[5] Lord Parker C.J. stated that he was quite satisfied that the Judicial Committee in the *Wagon Mound* did not have in mind the 'thin skull' cases, and affirmed the continuance, after that case, of the proposition that a tortfeasor takes his victim as he finds him.

Other minor comments may be made. For example, on page 647 Professor Fleming deals with the summary settlement of disputes between husband and wife. Should not some reference have been made to the High Court decision of *Wirth v. Wirth*[6] as applied by the Supreme Court of Victoria in *Noack v. Noack*?[7]

But the above comments in no way detract from the excellent qualities of this book. Rather they are a tribute to the stimulation of interest which the book engenders. The various Australian reports contain a wealth of material, the full extent of which is perhaps not yet generally realized. Professor Fleming's book is an example of the rich harvest that can be garnered from Australian jurisprudence. The second edition continues the standard set by the first edition.

D. MENDES DA COSTA*

Criminal Law: The General Part, by GLANVILLE WILLIAMS, LL.D., F.B.A. 2nd ed. (Stevens & Sons Ltd, London, 1961), pp. i-liv, 1-929. Australian price £7.

Good wine may need no bush, but the unanimous acclamation of the connoisseurs surely indicates that the vintage is not just good but quite superb. When the first edition of this book appeared in 1953, Dr Williams had already established himself as a writer of extraordinary merit on the

[2] [1949] A.C. 155, 168. And see *Darling Island Stevedoring Co. Ltd v. Long* (1957) 97 C.L.R. 36.

[3] *Overseas Tankship (U.K.) Ltd v. Morts Dock & Engineering Co. Ltd* [1961] 2 W.L.R. 126. [4] [1951] 2 K.B. 537. [5] [1962] 2 W.L.R. 148.

[6] (1956) 98 C.L.R. 228. And see *Martin v. Martin* (1959) 33 A.L.J.R. 362.

[7] [1959] V.R. 137.

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